IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/08/2003

CORAM

THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL. APPEAL NO.565 OF 2000 AND CRL. APPEAL NO. 611 OF 2000

1. Sekar
2. Moorthy
3. Mookkan @ Mookkaiya
4. Thangaiya
5. Kumar
6. Chezhian .. Appellants in
CA.565 of 2000

Subban @ Chinnappa .. Appellant in
CA.611 of 2000

-Vs-

The State of Tamil Nadu
rep. by the Inspector of Police,
Karambakkudi Police Station
Pudukottai District
(Crime No.143/97) .. Respondent in
both the appeals

These criminal appeals are preferred under Section 374(2) Cr.P.C. against the judgment of the learned Additional Sessions Judge-cumChief Judicial Magistrate, Pudukkottai made in S.C.Nos.65/97 and 73/99 dated 29.5.2000.

!For Appellants : Mr.S.Nagamuthu
for Mr.T.Susindran for A1 to A6
in CA.565 of 2000
Mr.B.Pugalenthi
for appellant in CA.611/2000

^For Respondent : Mr.V.Jaya Prakash Narayan
Govt. Advocate (Crl. side)

:COMMON JUDGMENT

This judgment shall govern both the criminal appeals, namely, C.A. No.565 of 2000 and C.A.No.611 of 2000.
2. The appellants in C.A.No.565 of 2000, who were ranked as A1 to A6

in S.C.No.65 of 1997 and the appellant in C.A.No.611 of 2000, who was as A7 in S.C.No.73 of 1999 have brought both these appeals challenging the judgment of the learned Additional District Judge-cum- Chief Judicial Magistrate, Pudukkottai. The accused were charged, found guilty and sentenced to undergo imprisonment as shown below:

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Accused Charge Guilty Sentence

- -

A1 148,332,307,427 IPC All charges 148 - 2 yrs RI
3(1) of TNPPDL Act 332 - 2 yrs RI
307 - 5 yrs RI
+ Rs.2000/-,
i/d
6 months SI
3(1) - 3 yrs &

3 months RI +
Rs.2000/-, i/d
6 months SI

A2 148,427 IPC All charges 148 - 2 yrs RI
3(1) of TNPPDL Act 3(1) - 3 yrs &
(2 counts) 3 months RI +
Rs.2000/-, i/d
6 months SI
(each count)

A3 147 IPC, All charges 147 - 1 yr. RI
3(1) of TNPPDL Act 3(1) - 3 yrs &
(2 counts) 3 months RI +
Rs.2000/-, i/d
6 months SI
(each count)

A4 148 IPC All charges 148 - 2 yrs RI
3(1) of TNPPDL Act 3(1) - 3 yrs &
(2 counts) 3 months RI +
Rs.2000/-, i/d
6 months SI
(each count)

A5 147 IPC All charges 147 - 1 yr. RI
3(1) of TNPPDL Act 3(1) - 3 yrs &
3 months RI +
Rs.2000/-, i/d
6 months SI

A6 147 IPC All charges 147 - 1 yr. RI
3(1) of TNPPDL Act 3(1) - 3 yrs &
3 months RI +

Rs.2000/-, i/d
6 months SI

A7 148 IPC All charges 148 - 2 yrs. RI
3(1) of TNPPDL Act 3(1) - 3 yrs &
3 months RI +
Rs.2000/-, i/d
6 months SI

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3. The short facts for the disposal of these two appeals can be stated as follows:

a) P.W.20 Rajendran, who was the Arrack Seller at Kattuvanpirai Village, was arersted by P.W.1 Sampath, Grade I Constable attached to Karambakudi Police Station along with his team on 15.04.1997 at about 11 .00 p.m. He was brought to the police station. P.W.19 Kathamuthu another Grade I Constable was preparing the Special report in that regard. At that time, P.W.20 escaped from the custody. P.W.18 Kanagaraj Head Constable on the complaint of P.W.19 registered a case in Crime No.142/1997 under Sections 4(1)(b) of TNP Act and Section 224 IPC against P.W.20 and prepared Ex.P.37 printed F.I.R.

b) On 16.4.1997, one lady, who claimed herself as mother of P.W.20, came to the police station at about 7.00 a.m. and enquired about P.W.20. P.W.1 told her that she escaped from the police custody. But, she replied that the police have killed her son and gave false information to her. So saying she went away. At about 10.00 a.m., all the accused being brothers of P.W.20 and 15 other villagers constituted an unlawful assembly and gathered in front of the police station. A1 and A2 were armed with Aruval Mos.4 and 5, A4 with MO6 Crowbar and the accused in CA.No.611 of 2000 armed with crowbar and others with stick entered into the police station. At that time, PW2, Arunachalam, Sub Inspector of Police came to the police station in a police jeep bearing registration No.TNP 5306. A1 instigated others by saying that " vy;nyhiua[k; btl;og; nghLq;fs;" and started damaging the fence, police jeep, Motor cycle bearing registration No.TN 59-8263, name board of the police station, telephone line front side "nkw;Tiu Xlfs;" and front side door of police station.

c) A1 with Aruval attacked P.W.2 and caused injuries on right side chest by saying ",j;njhL bjhiye;J ngh". In order save the properties and their life, P.W.1 with M.O.1 revolver shot on sky three times. Immediately, all the accused persons were ran away from the scene of occurrence. P.W.17 Rajendran Head Constable received a complaint under Ex.P.2 from P.W.2 and registered a case in Crime No.143/1997 under Sections 147, 148, 427, 332, 307 IPC and 3(1) of TNPPDL Act and prepared Ex.P.35 printed F.I.R. and the same was despatched to the concerned court through P.W.21 Kaliaperumal Constable. The copies were sent to higher officials.

d) P.W.22 Dhakshinamurthy, Inspector of Police took up further investigation on 16.4.1997 at about 11.30 a.m. He informed the crime to the higher officials and prepared Ex.P.10 Observation mahazar in front of P.W.11 and one Chinniah and prepared Ex.P.40 rough sketch also. The Investigating Officer at about 12.30 p.m. seized M.O.12 series cile;j XLfs; , MO3 series broken name board pieces, MO7 sticks, MO8 sticks, MO10 broken glass pieces

from jeep mirror under Ex.P.11 in front of P.w.11 and another witness. He also seized MO1 Revolver, MO2 series fhyp njhl;lh nf]; under Ex.P.12 in the presence of P.W.11 and other witness. P.W.2 went to Primary Health Centre, Karambakudi on 16.4.1 997 at about 10.30 a.m. with police memo where P.w.7 Dr.Syed Mydin treated P.W.2 and issued Ex.P.4 wound certificate. P.W.2 was referred to the Government Hospital, Pudukkottai to take X-ray and found no fracture. Ex.P.5 was the accident register. P.W.22 on 16.4.1997 at about 6.00 p.m. recovered MO11 blood stained banian, MO13 blood stained uniform shirt worn by P.W.2 under Ex.P.13 in front of P.w.11 and another witness. He made a request to P.W.5 Arumugam Divisional Engineer, Telephone Department to assess the loss to the telephone in police station. Accordingly, P.W.5 valued the loss to the tune of Rs.360/- under Ex.P.3. On request made by P.W.22, P.W.10 Balasubramanian, Junior Engineer, P.W.D, Arnanthangi valued the loss to the police station building to the tune of Rs.5,200/- under Ex.P.9. P.W.9 Senthilkumar, Motor Vehicle Inspector valued the loss to the motor cycle to the tune of Rs.2030/- and Rs.4050/- to the jeep under Ex.P.8.

e) The Investigating Officer arrested A3 on 17.4.1997 at about 7.30 p.m. A3 made a voluntary confessional statement to P.W.22. The admissible portion of the same was marked as Ex.P.14. Pursuant to the confessional statement, M.O.9 stick was recovered under Ex.P.15 in front of P.W.11 and another witness. A3 was remanded to judicial custody. On 18.4.1997 at about 11.30 a.m., A1, A4 and A5 were arrested by P.W.22 . All the accused were given voluntary confessional statements to P.W.22 in front of the witnesses. The admissible portion of the said confessional statement were marked as Ex.P.16, Ex.P.17 and Ex.P.18 respectively. Pursuant to the confessional statement given by A1, MO4 aruval was recovered under Ex.P.19. Pursuant to the A4's confessional statement, MO6 crowbar was recovered under Ex.P.20 and in pursuance of A5's confessional statement, MO9 stick was recovered under Ex.P.21. When A1 was arrested, A1 was found with injuries. Therefore, he was sent with medical memo for treatment to P.W.7 Doctor. P.W.7 examined A1 on 18.4.1997 and issued Ex.P.7 wound certif icate. Then, P.W.22 sent A1, A4 and A5 for remand. On 21.4.1997 at about 11.00 a.m. A2 and A6 were arrested by P.W.22. A2 and A6 made a voluntary confessional statement to P.W.22 in front of the witnesses. The admissible portion of the same was marked as Ex.P.22 and Ex.P.23 respectively. Pursuant to the confessional statement given by A2, MO5 Aruval was recovered under Ex.P.24. In pursuance of A6's confessional statement, M.O.9 stick was recovered under Ex.P.25.

f) P.W.22 made a request to the court for sending the Mos for chemical examination under Ex.P.31, Ex.P.26 and Ex.P.28. Accordingly, P.W.1 2 Head Clerk attached to Judicial Magistrate No.II, Pudukkottai received Ex.P.31, Ex.P.26 and Ex.P.28 and sent MOs to the Forensic Lab and received reports Exs.P.30, P.33 and P.34 on various dates. P.W.22 examined all the witnesses on various dates and recorded their statements. On completion of the investigation, he filed a charge sheet against all the accused persons as stated above.

4. In order to prove the different charges levelled against the accused, the prosecution has examined 22 witnesses and marked 42 exhibits and 14 MOs. On completion of the evidence on the prosecution side, the accused were questioned under Section 313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses, which they flatly denied as false. A1 was examined as D.W.1 on the side of the accused.

No document was marked on the side of the accused. On consideration of the rival submissions made and scrutiny of the materials available, the trial court has found all the accused guilty of different charges and sentenced them imprisonment as stated above. Aggrieved, appellants have brought these appeals.

5. The learned counsel appearing for the appellants inter-alia made the following submissions.

According to the prosecution, the occurrence has taken place at about 10.00 a.m. and a case came to be registered immediately, but the same was despatched to the concerned court at about 5.00 p.m. through the Constable. The same was reached the Court at 9.45 p.m. The prosecution has not explained the delay caused, which would be very fatal to the prosecution case. Apart from that, in Ex.P.1 General Diary, it was found that the Constable through whom original F.I.R was despatched to the Court was very much available at about 8.00 p.m. This would indicate that the version of the prosecution that the original F.I.R was handed over to the Constable at 5.00 p.m. to produce the same before the Court was falsified. The first accused has clearly deposed that P.W.20 who was taken to the Police Station was very well available in the Police Station; that these people came over there to question the same and that in such a way the occurrence has taken place, but there was no involvement of the accused with the alleged crime and no such crime was actually committed by them. No ingredient under Section 307 was made out. According to the Doctor, who examined P.W.2, there was a lacerated wound found on the chest of P.W.2, which would not in any way affect P.W.2. At the time of occurrence, A1 also sustained injury, but the same was not properly explained by the prosecution, which affects the case of the prosecution to a great extent. The injury that was sustained by P.W.2 was not a cut injury and the same could not have taken place in the way and manner in which it was alleged by the prosecution. P.Ws.1 to 4 were the eyewitnesses. But, P.Ws.3 and 4 have turned hostile, and thus, what was available for the prosecution was the evidence of P.Ws.1 and 2, who were the Constable and Sub Inspector of Police, and hence, they were interested. Hence, no evidentiary value could be attached to the evidence. Since there was no allegation as to the charge of criminal trespass, then the case of the prosecution that the appellants damaged the back doors of the police station was not at all possible. Hence, the case of the prosecution in that regard has got to be rejected. P.W.1 has categorically admitted that he has not produced any arrest card for the arrest of P.W.20 Rajendran. It is pertinent to point out that the motive of whole case was rested on P.W.20, but he has turned hostile, which fact itself has shaken the whole theory of the prosecution case. The prosecution has thoroughly failed to show any motive for the appellant/ accused to commit any crime as alleged. In view of all the above, the lower court should have rejected the case of the prosecution, and thus, the accused are entitled for an acquittal in the hands of this Court.

6. Strongly opposing all the contentions put forth by the appellants' side, the learned Government Advocate would submit that the occurrence has taken place during day hours; that these appellants along with others constituted unlawful assembly and attacked the police personnel, damaged the properties in the police station, which were public properties; that the prosecution adduced evidence in every aspect of the matter to the satisfaction of the Court and has proved the case beyond reasonable doubt and thus, the

trial court was perfectly correct in finding the accused guilty. Hence, the judgment of the lower court has got to be sustained.

7. This Court paid its full attention on the rival submissions made and had a close scrutiny of the materials available and is of the view that both the appeals do not carry any substance.

8. As narrated above, the occurrence has taken place on 16.4.1997 at about 10.00 a.m. in a police station situated at Karambakudi where P.W.2 was the Sub Inspector of Police on the relevant date and P.W.1 was the Constable attached to the same police station. According to the prosecution, on the previous day, namely, on 15.4.1997, P.W.20 Rajendran, who was an arrack seller, was arrested at his place and brought to the police station. He was kept in the police custody and case papers were being prepared. At that time, P.W.20 escaped from the custody. P.W.18 on the complaint given by P.w.19, registered a case in Crime No.142/1997. Ex.P.37, printed F.I.R was prepared. This fact was spoken to by P.W.19 and P.W.20. Hence, this part of the prosecution case is proved by necessary evidence. Further case of the prosecution was that on next day morning, i.e. on 16.4.1997, a lady came to the police station calling herself as the mother of the said Rajendran and enquired about him. When it was informed by the police personnel that he escaped from the police custody, the same was not believed by her. But, she would say that the police has murdered him. So saying, she went out of the police station. At about 10.00 a.m. the appellants who are all the brothers of the said Rajendran came along with number of persons and constituted an unlawful assembly. From the testimony of P.Ws.1 and 2, it would be quite evident that A1 and A2 armed with Aruval, A4 and the accused in CA.611/2000 armed with Crowbar and others armed with sticks entered into the police station. From the evidence it would be clear that they constituted an unlawful assembly. P.W.2, the Sub Inspector of Police Station came to the police station at that time in his jeep bearing registration No.TNP 5306. At that time, A1 instigated others by saying that "vy;nyhiua[k; btl;og; nghLq;fs;" and started to damage the fence, the said police jeep, motor cycle bearing Registration No.TN 59-8263, name board of the police station, telephone line and front side door of police station. At this juncture, it has to be pointed out that all the damaged articles were seized by the Investigating Officer and they were placed before the Court through proper evidence. P.W.5 Divisional Engineer, Telephone department was examined and he valued the loss to the tune of Rs.36 0/-. On request of P.W.22, P.W.10 Junior Engineer P.W.D was also examined and he valued the loss to the tune of Rs.5,200/-. P.W.9 Motor Vehicle Inspector in his evidence has deposed that he valued the loss to the motor cycle to the tune of Rs.2030/- and Rs.4050/- to the jeep. The evidence of P.Ws.1, 2, 5, 9 and 10 coupled with the production of those MOs along with seizure mahazar would clearly speak about the damages caused by the accused to the police station. A1 attacked P.W.2 with MO4 Aruval and caused injury on right side chest. P.W.2 was treated by P.W.7 Doctor. He has given Ex.P.4 wound certificate. P.W.7 Doctor was examined. In the wound certificate he has recorded the statement of P.W.2 at the earliest point of time. The injury though lacerated one, from the evidence of P.W.2 it would be clear that the attack was made on the chest. From this, it could be well inferred that only with the intention of causing death the attack was made on the chest with Aruval. Hence, the case came to be registered against A1 under Section 307 IPC immediately narrating all the

incidents mentioned above. According to the prosecution, the FIR was despatched through Constable at about 5.00 p.m., who boarded the bus and reached the residence of the Magistrate at 9.45 p.m. and the FIR was received by him at 9.45 p.m. As pointed out by the learned counsel for the appellants, this court is able to notice delay, but this Court is unable to see that the delay can be taken as a reason either for rejecting the prosecution case or to doubt the prosecution case with any infirmity or untrue. It has got to be pointed out that there was some delay noticed, but what prejudice was caused to the accused and what embellishment was made in the prosecution case are not shown by the appellants in any way. The blood stained uniform and other clothes were recovered by the Investigating Officer.

9. One strong circumstance what was available to the prosecution was that all the weapons have been recovered from the accused pursuant to the confessional statement recorded in the presence of the witnesses. Pursuant to the confessional statements given by A1 and A2, MO4 and MO5 Aruval were recovered. In pursuant of the confessional statement of A3, MO9 stick was recovered. Pursuant to the confessional statements given by A4, A5 and A6, M.O.6 Crowbar and MO9 stick were recovered. This part of the prosecution case, wherein the weapons used by the accused at the time of the alleged crime and the recovery of the same pursuant to the confessional statement by the accused have been clearly spoken to by the prosecution witnesses and this part of the evidence has stood as good proof as to the nexus between the accused and the crime in question. Apart from that all the MOs recovered were sent for chemical examination and the reports have been brought forth, which has also positively stood as good piece of evidence to the prosecution case, and thus, in the instant case, the prosecution in order to bring home the guilt of the accused has not only relied on the direct evidence of PWs.1 and 2, but also relied on the medical evidence and the wound certificate, apart from that the recovery of weapons, which was used by the accused at the time of occurrence. In view of the same, all or any one of the contentions put forth by the appellants' side do not carry any merit. The lower court was perfectly correct in finding all the accused guilty of the charges mentioned above and there is nothing to interfere in the conviction.

10. Coming to the question of punishment, the Court is of the view that the sentence imposed by the lower court under Section 3(1) of TNPPDL Act to the accused Nos.1, 2 (2 counts), 3(2 counts), 4(2 counts), 5 and 6 and the accused in C.A.No.611 of 2000 has got to be reduced to 2 years RI, which would meet the ends of justice. Accordingly, the sentence imposed by the lower court to the accused Nos.1,5,6 and accused in CA.No.611 of 2000 under Section 3(1) of TNPPDL Act alone is reduced to 2 years RI and also the sentence imposed by the lower court to the accused Nos.2 to 4 under Section 3(1) of TNPPDL Act (2 counts) alone is reduced to 2 years RI for each count. In other respect, the judgment of the lower court is confirmed. With the above modification, these criminal appeals are dismissed. The Sessions Judge shall take steps to commit the accused Nos.1,2, 4 to 6 and accused in SC. No.73 of 1999 to prison, if they are on bail, to undergo the remaining period of sentence.

04.08.2003
Index : Yes

Internet : Yes
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To
1. The Judicial Magistrate, No.II, Pudukkottai
2. The Judicial Magistrate, Alangudi
3. The Judicial Magistrate, Alangudi
through the Chief Judicial Magistrate, Pudukkottai
4. The Additional Sessions Judge-cum- Chief Judicial Magistrate, Pudukkottai
5. The Superintendent, Central Prison, Tiruchirappalai
6. The Public Prosecutor, High Court, Madras
7. The Dy. Inspector General of Police, Chennai-4
8. The Inspector of Police, Karambakudi Police Station
Pudukkottai District.